

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 12, 2005

TO: Persons on the attached mailing list.

RE: Beneficial Land Management, L.L.C.
Permit No. WQ0004666000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Victoria County Courthouse, 115 North Bridge Street, Victoria, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

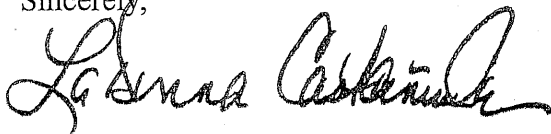
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/is

Enclosures

MAILING LIST

for

Beneficial Land Management, L.L.C.

Permit No. WQ0004666000

FOR THE APPLICANT:

Jess Mayfield
Beneficial Land Management, L.L.C.
P.O. Box 6870
San Antonio, Texas 78209-0870

Russell Masters
E-Lutions Environmental Services
P.O. Box 690767
San Antonio, Texas 78269

FOR THE EXECUTIVE DIRECTOR:

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FOR OFFICE OF PUBLIC ASSISTANCE:

Jodena Henneke, Director
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FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
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Public Interest Counsel MC-103
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FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

PROTESTANTS/INTERESTED PERSONS:

See attached list.

THE HONORABLE KEN ARMBRISTER
TEXAS SENATE
PO BOX 12068
AUSTIN TX 78711-2068

DAVID WEAVER
PO BOX 2085
VICTORIA TX 77902-2085

SYLVIA BALENTINE
204 S GUADALUPE ST
EDNA TX 77957-3114

DAVID P BROWN ADMINISTRATOR
CITIZENS MEDICAL CENTER
2701 HOSPITAL DR
VICTORIA TX 77901-5748

DAVID P BROWN
116 CREEKSIDE DR
VICTORIA TX 77904-1102

MR. & MRS MARJORIE CHANEK
707 DUNDEE ST
VICTORIA TX 77904-2730

THE HONORABLE WAYNE D DIERLAM
VICTORIA COUNTY
RM 102
101 N BRIDGE ST
VICTORIA TX 77901-6522

WAYNE D DIERLAM
204 GUINEVERE ST
VICTORIA TX 77904-1833

TOM KOLLE
603 CHAMPIONS ROW
VICTORIA TX 77904-3334

PAUL E MONDOLFI MD
1058 WIGINGTON LN
INEZ TX 77968-3393

THE HONORABLE DONALD R POZZI
VICTORIA COUNTY
101 N BRIDGE ST STE 102
VICTORIA TX 77901-6545

TCEQ PERMIT NO. WQ0004666000

APPLICATION BY

Beneficial Land Management, L.L.C.

for Permit No. WQ0004666000

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Beneficial Land Management, L.L.C.'s, (Applicant) application and ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters and comments at a public meeting from the following persons: David P. Brown, Emil J. Chanek, Marjorie Chanek, Paul E. Mondolfi, M.D., The Honorable Donald R. Pozzi, and County Commissioner Wayne D. Dierlam. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant has applied to TCEQ for Permit No. WQ0004666000 to authorize the beneficial land application of wastewater treatment plant sludge at a rate not to exceed 11.4 dry tons/acre/year for field #'s 1-6 and 9, 10.2 dry tons/acre/year for field # 7, 12 dry tons/acre/year for field # 8, and 9.6 dry tons/acre/year for field # 10. The proposed land application site is approximately 793.4 acres within an approximately 2,881 acre tract that is located ten miles northwest of the City of Inez, on Farm-to-Market Road 444 and 2.5 miles northeast of its intersection with Karnes Road, Victoria County, Texas. The draft permit does not authorize any discharge of pollutants into water in the State. The proposed land application site is located in the drainage area of Lavaca Bay and Chocolate Bay in Segment No. 2453 of the Lavaca-Guadalupe Coastal River Basin.

PROCEDURAL BACKGROUND

TCEQ received the Applicant's application on July 21, 2003, and declared it administratively complete on August 22, 2003. The Applicant published the Notice Of Receipt Of Application And

Intent To Obtain A Permit in the *Victoria Advocate* on September 18, 2003. The Applicant published the Notice Of Application And Preliminary Decision in the *Victoria Advocate* on November 5, 2004. The Applicant published the Notice of Public Meeting in the *Victoria Advocate* on May 12, 2005. A public meeting was held on June 14, 2005, in Victoria, Texas. The public comment period closed on June 14, 2005. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Judge Donald R. Pozzi expressed concern over the environmental impact pathogens, bacteria, and viruses may have to the area's wildlife and agriculture operations and water interest of the citizens.

RESPONSE 1:

The TCEQ is tasked with maintaining the quality of water in the state consistent with the public health and enjoyment and the propagation and protection of terrestrial and aquatic life. The applicable regulations and the draft permit must implement the previously mentioned protections. This permit is a no discharge permit and is for the beneficial use of sludge. The permit including buffer zones and pathogen reduction requirements incorporates a number of requirements the Applicant must comply with in order to protect the health and safety of people, animals, and water quality. If the Applicant does not comply with the terms of its permit then it is in violation and subject to enforcement.

Section VII of the permit lists the requirements the Applicant must meet regarding Pathogen control. The Applicant must implement one of three alternatives to control pathogens or it is subject to enforcement.

COMMENT 2:

Paul Mondolfi expressed concerns about chemicals, cleaning products, and heavy metals associated with sludge polluting the area's surface and ground water, such as Garcitas Creek and Arenosa Creek. Judge Donald R. Pozzi, Emil J. Chanek, and Marjorie Chanek expressed concern about the creeks, streams, rivers, and underground water systems becoming contaminated.

RESPONSE 2:

The draft permit does not authorize any discharge of pollutants into water in the State. Section IV of the permit, General Requirements, lists the concentrations of metals that are allowed at the site. Section VI of the permit, Required Management Practices, sets out the requirements the Applicant must follow on when and how to apply the sludge. In addition, section IX of the permit, Monitoring Requirements, describes what and how the Applicant is to monitor the sludge and

facility. If the permit is properly complied with, then contamination of surface or groundwater is not expected to be a problem. If the permit is not followed properly then the Applicant is in violation of their permit and could be subject to enforcement.

COMMENT 3:

Paul Mondolfi, Emil Chanek, and Marjorie Chanek expressed concern about other sites or areas that more may be more receptive to the application of sewage sludge and that San Antonio's waste should be kept in the San Antonio area.

RESPONSE 3:

The TCEQ does not have the authority to select a site or say where the sludge can come from. If a proposed land application site meets regulatory criteria, contains geologic and soil characteristics that are suitable for land application, is not located within a Federal Emergency Management Agency designated flood way, and meets all required buffer zones as stated in 30 TAC Section 312.44, it would be considered acceptable for land applying Class B sludge.

COMMENT 4:

Judge Donald R. Pozzi and Paul Mondolfi expressed concern with the environmental impacts application of sewage sludge may have on the health of the citizens and surrounding farms. Paul Mondolfi also noted concern about the commercialization and monetary gain possible through a disregard of environmental health. In addition, David Brown expressed concern over the public health and well being of area residents.

RESPONSE 4:

Monetary gain is not a consideration in assessing whether to issue a beneficial land use permit under the applicable regulations. Only properly treated materials that have met rigid requirements to significantly reduce vector attraction and reduce pathogens are approved for land application. These requirements, combined with site access restrictions, help minimize the potential for disease transmission. In addition, 30 TAC Section 312.44 outlines detailed management practices designed to protect human health and the environment. These requirements are designed to help protect against contamination. Periodic site inspections are conducted by staff from the TCEQ field offices to determine whether these regulations are met. Also, the TCEQ requires the Applicant to submit an annual report which aids in monitoring compliance with specific conditions outlined in the permit. If the Applicant does not comply with the terms of its permit then it is in violation and subject to enforcement.

COMMENT 5:

Judge Donald R. Pozzi expressed concern over the weight and movement of trucks hauling sewage sludge across the county road system.

RESPONSE 5:

TCEQ does not have statutory or regulatory authorization to address traffic or road conditions in the wastewater permitting process. Texas Water Code Chapter 26 and applicable regulations do not require an applicant to address the potential impact a facility may have on traffic issues. The permitting process controls the discharge of pollutants to or adjacent to state waters to protect the water quality of the state's rivers, lakes, and coastal waters.

COMMENT 6:

Judge Donald R. Pozzi and Paul Mondolfi expressed concerns over odors and the effects on air quality as a result of the land application of sewage sludge to the site.

RESPONSE 6:

TCEQ has established management requirements in accordance with 30 TAC Section 312.44(k) to control odors from land application sites. The draft permit incorporates these requirements. The Applicant is required to operate the proposed land application site in a manner to prevent public health nuisances. They must also prevent sludge debris from blowing or running off site boundaries or into surface waters and minimize objectionable odors through incorporation of sludge into the soil or by taking other corrective actions. The draft permit does not allow the Applicant to maintain or create any nuisance conditions at the land application site.

TCEQ regulations also require a 750 foot buffer zone requirement between the proposed land application site and established schools, institutions, businesses or residences (30 TAC Section 312.44(d)(4)). The management restrictions and buffer setbacks were established to help minimize any off-site odor problems.

If members of the public identify odor conditions from the facility, they may contact TCEQ's Region 14 office in Corpus Christi at 361-825-3100, or call toll-free, at 1-888-777-3186, or file online at <http://www.tnrc.state.tx.us/cgi-bin/enforcement/complaints>. If the facility is found to be out of compliance with the terms or conditions of its permit or with TCEQ regulations, it is a violation of the permit and the Applicant may be subject to enforcement.

COMMENT 7:

Judge Donald R. Pozzi and County Commissioner Wayne Dierlam attached with comments or made reference to partial minutes from the Victoria County Commissioners's court meeting from June 26, 2000.

RESPONSE 7:

The minutes provided and referenced objected to Beneficial Land Management's registration of a beneficial land use site. The Applicant is currently applying for a permit to authorize the

beneficial land application of wastewater treatment sludge on its property. The application for a permit is a separate and different action than the previous registration. In addition it did not provide any documentation or technical information indicating why the permit should not be issued.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

Respectfully submitted,

Texas Commission on Environmental Quality

Stephanie Bergeron Perdue, Director
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**REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
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ENVIRONMENTAL QUALITY**